

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:  
The Port of Bellingham

FIRST AMENDMENT  
TO AGREED ORDER  
No. DE **1090**

TO: The Port of Bellingham  
P.O. Box 1677  
Bellingham, Washington 98227

**I. INTRODUCTION**

The State of Washington, Department of Ecology (Ecology) and the Port of Bellingham (Port) entered into Agreed Order No. DE 1090 (Order) in December of 2004, which requires the Port to conduct a remedial investigation and feasibility study (RI/FS) for the I&J Waterway Site. This amendment incorporates the work plan and schedule for remedial actions to be performed under the Order.

**II. JURISDICTION**

This amendment to Agreed Order No. DE 1090 is issued pursuant to the authority of RCW 70.105D.050(1).

**III. AMENDMENT**

This amendment does not attempt to recite all of the provisions of the Order. Provisions of the Order not specifically addressed in this amendment remain in full force and effect. This amendment will be the subject of concurrent public notice and comment pursuant to WAC 173-340-600.

Agreed Order No. 1090 is hereby amended to incorporate the following provisions, which are integral and enforceable parts of the Order:

**A. Section IV is amended to include subsection 4 as follows:**

4. Schedule Changes

The Port and Ecology may agree to changes in the schedule of work by written agreement signed by the Project Coordinators for the Port and Ecology. Schedule changes that are substantial shall require amendment to the Order and public comment pursuant to WAC 173-340-600.

**B. Section V is amended to include subsections 13 and 14 as follows:**

13. Indemnification

The Port agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of the Port, its officers, employees, agents, or contractors in entering into and implementing this Order, to the extent permitted by law. However, the Port shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

14. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the Port to cease such activities for such period of time as it deems necessary to abate the danger. The Port shall immediately comply with such direction.

If, for any reason, the Port determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the Port may cease such activities. The Port shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the Port shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Port's cessation of activities, it may direct the Port to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the Port's obligations with respect to the ceased activities shall be suspended until Ecology determines the

danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

**C. Exhibit A to this First Amendment to the Order is hereby incorporated as Exhibit A to the Order. In addition, Section IV, Work to Be Performed, is hereby amended in its entirety to read as follows:**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port take the following actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. Purpose of the Remedial Investigation/Feasibility Study (RI/FS)

The purpose of the work will be to conduct sediment investigations, upland source controls and complete an RI/FS for the Site pursuant to WAC 173-340-350 and WAC 173-204-560.

2. Scope and Description of the Work

A. The Port shall conduct a remedial investigation and feasibility study (RI/FS) as specified in the RI/FS Work Plan (Work Plan), attached as Exhibit A. Exhibit A is hereby incorporated by reference and made an integral and enforceable part of the Order.

B. All sampling and analysis for the RI/FS shall be conducted in accordance with the Work Plan, including Appendix A (Sediment Sampling and Analysis Plan and Quality Assurance/Quality Control Plan) and Appendix B (PSDDA Sediment Characterization Sampling & Analysis Plan).

C. Within thirty (30) days of the effective date of the First Amendment to the Order, and pursuant to WAC 173-340-350(7)(c)(iv), the Port shall submit a Health and Safety Plan that meets the requirements of WAC 173-340-810 to Ecology for review and comment. The Port shall perform the RI/FS in accordance with the Health and Safety Plan.

D. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Ecology Toxics Cleanup Program Policy 840 - Data Submittal Requirements.

E. The Port will submit a draft RI/FS report to Ecology for review and comment within ninety (90) calendar days of completion of field work and receipt of final analytical results, but not later than two-hundred and ten (210) days from the effective date of the First Amendment to the Order. The draft RI/FS report will identify a Preferred Remedial Alternative for site cleanup and will meet MTCA (WAC 173-340-350) and SMS (WAC 173-204-560) requirements for an RI/FS.

F. Within forty-five (45) days of receipt of Ecology's comments on the draft RI/FS, the Port will incorporate Ecology's comments and submit a revised RI/FS to Ecology for review. The revised RI/FS will be considered final after any necessary public comment and Ecology approval.

G. During performance of this Order, the Port will submit written quarterly progress reports to Ecology. The progress reports will summarize work performed during the reporting period, and the work anticipated during the following quarter.

Effective date of this amendment: \_\_\_\_\_

PORT OF BELLINGHAM

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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Date:\_\_\_\_\_

Date:\_\_\_\_\_